under an agreement within the statute of frauds, the one performing them may recover their reasonable value in a quasi-contractual action. In some jurisdictions the agreed price may be used as evidence of the value of the services. *Scarisbrick v. Parkinson* (1869, Ex.) 20 L. T. N. S. 175; Keener, *op. cit.*, 290; *contra, Hillebrands v. Nibbelink* (1879) 40 Mich. 646. If the jury find the reasonable value to be the contract price—as is not infrequently the case—no one imagines that the contractual rather than the quasi-contractual duty is being enforced. Obviously this general principle applies to situations like that in the principal case. It is unconscionable that one who has paid nothing and who has acquired property upon an express oral agreement to hold it for others should be allowed both to break his promise and to keep the property. To compel surrender of the latter is not to enforce the express oral trust, for *non constat* that the terms of the oral trust are identical with the constructive obligation to convey to the one paying the purchase price. In some cases they would be, in others not. In any event, if they were identical, it would be a mere dramatic coincidence. In many states there are statutes which affect the matter. These are collected and discussed, together with the cases, in Ames, *Lectures on Legal History*, 431-434. *Cf.* also the Comment upon *Constructive Trusts Arising upon Breach of Express Oral Trusts of Land* (1918) 27 YALE LAW JOURNAL, 389, also CURRENT DECISIONS, *infra.*

WILLS—CONSTRUCTION—LEGACY TO "CHILD" OF TESTATOR'S SON DOES NOT INCLUDE ADOPTED CHILD.—The testator was survived by his son, S, who was married but without children. The will gave a legacy, upon the death of S, "to his child or children and their heirs," with a gift over to residuary legatees in case S left no child. After the testator's death S legally adopted a child. *Held,* that the legacy belonged to the residuary legatees. *In re Puterbaugh's Estate* (1918, Pa.) 104 Atl. 601.

It would seem that the court was justified under the circumstances in ascribing to the word "child" its primary and popular meaning. See *Lichter v. Thiers* (1909) 139 Wis. 481, 121 N. W. 153. Had the adoption been prior to the testator's death, the adopted child might in some circumstances have been construed as intended by the testator to be included within a legacy to "children." *In re Truman* (1905) 27 R. I. 209, 61 Atl. 598. An adopted child has been permitted to take under a devise to the "heirs at law" of the testator's daughter, even though the statute for adoption was enacted after the testator's death. *Smith v. Hunter* (1912) 86 Oh. St. 106, 99 N. E. 91. But the weight of authority is believed to be *contra. Wyeth v. Stone* (1887) 144 Mass. 441, 11 N. E. 729; *Brown v. Wright* (1907) 194 Mass. 540, 80 N. E. 612. Similarly, under statutes which avoid the lapsing of a legacy to a relative of the testator, when the legatee dies before the latter, there is a conflict of authority whether an adopted child can take the legacy given to his foster parent and so prevent the lapse. *Phillips v. McConica* (1898) 59 Oh. St. 1, 51 N. E. 445 (holding he does not); *Warren v. Prescott* (1892) 84 Me. 483, 24 Atl. 948 (holding he does).